

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

2006 SEP 25 P 12:33

UNITED STATES OF AMERICA)
)
)
v.)
)
ELAINE A. BROWN, and)
EDWARD LEWIS BROWN,)
Defendants)
_____)

Criminal No. 1:06-cr-00071-SM

NOTICE AND MOTION TO DISMISS INDICTMENT

JUDICIAL AND ADMINISTRATIVE NOTICE

The Defendants in propria persona without representation by an attorney notice this court and all parties involved in the above captioned case, of their motion to Dismiss the Indictment and the included memorandum. Officers of the court are hereby noticed of their continuing duty under authority of the supremacy; equal protection and full faith and credit clauses of the United States Constitution and the common law authorities of Haines v Kerner, 404 U.S. 519-421, Platsky v. C.I.A. 953 F.2d. 25, and Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000). In Haines: pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In Platsky: court errs if court dismisses the pro se litigant without

instruction of how pleadings are deficient and instructions to repair pleadings. In Anastasoff: litigants' constitutional Rights are violated when courts depart from precedent where parties are similarly situated.

MOTION TO DISMISS INDICTMENT

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of the Constitution for the United States, Amendments V; VI; Federal Rules of Criminal Procedure, rule 6(b)(1)(2) and the Jury Selection and Service Act of 1968, 28 U.S.C. 1867 (f), to **DISMISS THE INDICTMENT** filed in the above captioned case on the ground that the entire grand jury was not lawfully drawn, summoned, or selected as required by law from the state and federal district. The jurors are all disqualified nunc pro tunc ab initio as the qualification process is among the Defendant's constitutionally secured unalienable due process Rights. We have an adversarial judicial system. All parties to any given action, the government included, stand on equal ground. The system isn't openly set up for convenience of the government. Government always has the burden of proof, whether in civil or criminal matters. The Defendants have the Right to challenge the qualifications and competency of everyone involved in the prosecution process, inclusive of grand and petit jurors selected from "peers" who ultimately have responsibility for determining indictable offenses and/or final liability. If and when government personnel deprive the Citizen of **any** of these Rights as done in this case, the constitutionally secured due process of law is abridged. Because of the court officers deliberate actions, this court has now lost subject matter jurisdiction. As ground for this motion the Defendants now state:

1. The array of grand jurors was not selected from the venue State and district where each crime alleged in the indictment was committed.
2. The Defendants were not notified of the grand juror selection and did not have the opportunity to challenge the grand jury array (composition selection process) and individual grand jurors prior to the grand jury being seated.
3. Starting in July 2006, the Defendants made several written requests directly to the Clerk of Court, James R. Starr to provide information on the grand jury selection. See Docket # 35 and 37.
4. James R. Starr has unlawfully obstructed the Defendants and refused to provide any information to them concerning the grand jury. See Docket # 36 and 38.
5. The Defendants filed a Motion (docket # 46) requesting this court order the production of the grand juror information. This court has intentionally delayed ruling on this motion to protect the U.S. Attorney and obstruct the Defendants' Right to a fair trial.
6. The Defendants have the absolute Right to obtain information on the grand jury to properly prepare their motion challenging the unlawful jury selection:
7. The defendants' have filed supporting affidavits. See docket # 25.

MEMORANDUM AND FACTS

The relevant portion of Amendment V to the United States Constitution provides: “No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a Grand Jury, ...” The relevant portion of Amendment VI to the United States Constitution provides: “In all criminal prosecutions, the accused shall enjoy the Right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, ...” Both Amendment V and Amendment VI are binding mandates on this court.

Federal Rules of Criminal Procedure, rule 6(b)1 provides challenges. Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified. The Right to challenge grand jury array (composition) and individual jurors is antecedent to individual jurors being administered the oath required prior to a grand jury being formally seated. The government attorney and the defendant, or the defendant's counsel, both have the Right to challenge array and disqualify grand jury candidates prior to the grand jury being seated. If this Right has been denied, there is a simple solution at Rule 6(b)(2): "Motion to Dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in 28 U.S.C. § 1867(e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground

that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment." Rule 6(c) requires the grand jury foreman to record the vote, then file a letter or certificate of concurrence with the clerk of the court.

By consulting Chapter 121 of Title 28 generally, and 28 U.S.C. § 1867 specifically, we find that there is no distinction in the voir dire examination and other jury qualification process for grand juries or petit trial juries: "(a) In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefore, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury." If a defendant doesn't have the opportunity to challenge the grand jury array, or individual grand jurors. Then he has been deprived of substantive due process, which is expressly prohibited by 28 U.S.C. § 2072(b).

The United States Supreme Court in TEST v. UNITED STATES, 420 U.S. 28 (1975) ruled: "An unqualified Right of a litigant to inspect jury lists held required not only by the plain text of the provisions of the Jury Selection and Service Act of 1968, 28 U.S.C. 1867 (f), allowing the parties in a case "to inspect" such lists at all reasonable times during the "preparation" of a motion challenging compliance with jury selection procedures, but also by the Act's overall purpose of insuring "grand and petit juries

selected at random from a fair cross section of the community," 28 U.S.C. 1861. Hence, where the District Court denied petitioner's motion, prior to his trial and conviction on a federal drug charge, to inspect the jury lists in connection with his challenge to the grand and petit juries-selection procedures, the Court of Appeals' judgment affirming his conviction is vacated, and the case is remanded so that he may attempt to support his challenge."

CONCLUSION

Wherefore, this court is absent subject matter jurisdiction ab initio by proceeding without a valid indictment from a lawful grand jury and thus this matter is of paramount importance to all involved in this case. The Defendants request that this court issue an **ORDER** to DISMISS THE INDICTMENT made in this case **1:06-cr-00071-SM**. This court has a non-discretionary duty to grant this motion and (1) Order the Dismissal of the fraudulent grand jury indictment filed in this matter; (2) Enjoin the United States from any further harassment of Elaine Brown and Edward Brown; (3) Stay all further proceedings until such time as the United States complies with the organic law.

ORAL ARGUMENT DEMANDED

Date September 21, 2006

Prepared and submitted by:

Elaine A. Brown
Elaine A. Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire

Edward L. Brown
Edward L. Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire

CERTIFICATE OF SERVICE

I, **Edward L. Brown**, certify that I delivered via postage paid First Class U.S. Mail Return Receipt, a true and correct copy of the above and foregoing **NOTICE AND MOTION** to the office of the Clerk of Court U.S. District Court, District of New Hampshire, at 55 Pleasant St., Concord, NH 03301-0001 for entry into the record and to William E. Morse in the office of THOMAS P. COLANTUONO, the United States Attorney for the District of (NH) located at 53 Pleasant St. Concord, NH 03301-0001.

Date September 21, 2006

Edward L. Brown
Edward L. Brown

James R. Starr, Clerk
Clerk's Office
Warren B. Rudman U.S. Courthouse
55 Pleasant Street, Room 110
Concord, NH 03301-3941.

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

2006 SEP 25 P 12: 33

September 21, 2006

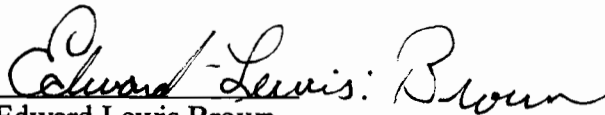
Via Certified Mail
#7006 0810 0002 7165 6595

Re: 01:06-cr-00071-SM UNITED STATES OF AMERICA v. Elaine Brown; Ed Brown

Dear Mr. Starr:

Please timely file the enclosed Defendants' motion into the above captioned case file and make a suitable docket entry. I have already mailed a true copy of the enclosed motion to the United States Attorneys office.

With all due respect,


Edward Lewis Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire